

Date of decision: 11-12-1995

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr. V.M.Raval for the petitioner
Mr. D.A.Bambania for the respondents.

Coram: S.K. KESHOTE, J
(11-12-1995)

ORAL JUDGMENT:

Heard the learned counsel for the parties.

2. The petitioner is the widow of late Laxmikant Narmadashanker Jani. Late Shri L.N.Jani was appointed as peon on 4-4-1970 in Lunawada Arts, Science & Commerce College run by a trust named Lunawada Vibhag Uchch Vidyottejak Mandal. After completing about 16 years' service in the college, late Shri L.N. Jani was retired from service on 13th November, 1987. Before the pension and other terminal benefits could have been sanctioned Shri Jani had expired on 30th July, 1990. The petitioner who is the widow of late L.N.Jani was entitled to family pension and accordingly the family pension was sanctioned under order dated 5-12-1991 by the the Director of Higher Education, Gandhinagar.

2. Out of the arrears of pension a sum of Rs.16,407.15 ps. was deducted stating to be excess payment of salary made to late late L.N.Jani. When the petitioner has represented the matter to the College and the Government for refund of the aforesaid amount, she has been orally given out that the service of her husband late L.N.Jani had exceeded by one year and five months beyond the age of 60 years and as such the amount of salary which has been paid to her husband for the aforesaid excess period was required to be deducted.

3. This court had issued rule in the present writ petition on 29th March, 1995. Though more than eight months have passed, the respondents have not filed any reply to the writ petition. The learned counsel appearing for respondents No.1 and 2 has orally contended that the petitioner is not entitled to any relief on the ground, firstly, that the amount of Rs.16,407.15 was deducted in the year 1991, whereas this petition has been filed before this Court on 27th March, 1995, and the petitioner has not furnished any explanation whatsoever for the delay in filing this writ petition. It has next been contended that the petitioner's husband has worked for excess period of one year and five months after he attained the age of superannuation and as such the respondents have rightly deducted the aforesaid amount of salary which has been paid to him for the said period.

4. Learned counsel for the petitioner on the other hand has contended that the amount which has been deducted could not have been deducted as it cannot be said to be excess payment, but it was the amount of wages earned. The late husband of the petitioner worked on the post and for working on the post he was paid salary/wages. Learned counsel for

the petitioner submitted that if the college, in which late L.N.Jani had worked, subsequently found that he had worked beyond the age of superannuation, then the wages which has already been earned by and paid to him could not been realised even from him, and it could not have been deducted from the amount of pension payable to the petitioner.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The respondents have sanctioned family pension to the petitioner after four years of the date of retirement of her husband. It is highly unreasonable and unjustified as well as most inhuman approach by the respondents to take such a long time of four years to sanction family pension to the petitioner. Against deduction of the aforesaid amount, the petitioner has approached the authorities from time to time and when nothing has been done in her case she has lastly resorted to the remedy of filing writ petition under Article 226 of the Constitution of India. In view of these facts it cannot be said that the petitioner has not explained the delay in filing the present writ petition.

6. So far as the second contention of the learned counsel for the respondents is concerned, I do not find any substance in it. It is not the case of the respondents that the petitioner's husband has committed some fraud and continued in service for a period exceeding the date of his superannuation. It is a case where the husband of the petitioner has been in fact allowed to work on the post beyond the date of superannuation. It was for respondents No.1 to consider the date of birth of late L.N.Jani and decide the question of his superannuation at the relevant time and in case they have decided the matter and found him to have crossed the age of superannuation by one year and five months, then respondents alone are responsible and accountable for the same. It is a case where the petitioner's husband had worked on the post and for working therein he was paid the wages. I do find merit in the submission of the learned counsel for the petitioner that it is the wages earned, which could not have been deducted from the amount payable to the petitioner towards family pension.

7. Similar question was considered by the Supreme Court in the case of State of Bihar vs. Narasimha Sundram, reported in AIR 1994..R

case, Narsimha Sundaram, had on the basis of his true age to retire on 31st January, 1988, but he remained in service by playing fraud on the department. However, it was an admitted case that he served the department till 30th September, 1989. By a writ petition the said respondent

claimed salary from February, 1988 to September, 1989. He has also made complaint that he was not being paid post retiral benefits. The High Court allowed the writ petition and granted both the reliefs. In para 3 of the judgment the Supreme Court has observed as under:

"So far the question of payment of arrears of salary is concerned, we do not find any merit in the contention of learned counsel for the appellant that the respondent can be refused his emoluments for the period in question as no proceedings were ever in.R

inquiry as to the alleged fraud played by the respondent on the department. It is not denied that the respondent worked till 30th September, 1989 and in that view we confirm that part of the impugned judgment which refers to the salary. The respondent should be paid his arrears of salary, if not already paid, within two months from today."

The case of the petitioner in the present writ petition is on a much higher pedestal than the case which was before the Supreme Court. It is not the case of the respondents in the present case that late Shri L.N.Jani had played fraud in the matter or on the basis of some fraud committed he had served the department for the excess period. In this case also no proceedings were ever initiated for inquiry.

8. In view of the decision of the Supreme Court in the case of State of Bihar v. Narasimha Sundram (supra), late Shri L.N.Jani was entitled to the salary and when that amount could not have been deducted even during the course of his life time, I fail to see any justification with the action of the respondents in deducting the amount from the family pension payable to the petitioner. It is a case where the respondents have acted highly arbitrarily. Deduction of the amount of the salary for the excess period of work from the amount of family pension is wholly arbitrary and unjustified. It is a case where the petitioner has been deprived of the said amount without any just cause and reason whatsoever.

9. Deprivation of the amount to the petitioner could not be explained on any justifiable cause. The petitioner has suffered the loss of interest which she could have earned on this amount. Taking into consideration all the facts and circumstances of the case it is a fit case in which interest on the amount which has been deducted from

the family pension of the petitioner should be awarded to her.

10. The next question which arises for consideration is the rate of interest which should be awarded to the petitioner. Looking to the fact that for long term fixed deposits the banks pay interest at the rate of 14% per annum, I consider it to be a fit case where interest should be awarded to the petitioner at the rate of 14% per annum. Though the amount has been deducted in the year 1989, the petitioner has approached this Court after about four years thereafter. This delay on the part of the petitioner has to be taken care of. Taking into consideration the period of delay, the petitioner is entitled to interest on the amount deducted from the family pension from the date of filing of the writ petition. It is a case where the widow of a low paid employee has been unnecessarily harassed and she has been compelled to approach this Court for the relief which ordinarily should have been granted by the respondents. In view of this position the petitioner deserves to be reasonably compensated for the expenses incurred by her in filing of this petition before this court.

11. In the result the writ petition succeeds, and it is hereby allowed. Action of the respondents herein in deducting the amount of Rs.16,407.15 ps. from the family pension payable to the petitioner, towards salary for the period February 1988 to September, 1989 of late L.N.Jani, is declared to be illegal and arbitrary. The respondents are directed to refund the said amount forthwith to the petitioner. Respondents are further directed to pay interest on the aforesaid amount at the rate of 14% per annum from the date of filing of the writ petition, i.e 27th March, 1995 till the date of payment. Respondents No.1 and 2 are further directed to pay Rs.3,000/- (Rupees three thousand only) to the petitioner by way of cost of this writ petition. Rule made absolute accordingly.

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